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OFFICE OF PETITIONS

In re Application of
Montano et al.
Application No. 09/972,032
Filed: October 5, 2001
Attorney Docket No. 27708-04003

DECISION ON PETITION

This is a decision on the renewed petition filed on March 6, 2006, to withdraw the holding of abandonment.

The application became abandoned for failure to reply timely to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures ("Notice to Comply"), mailed on April 21, 2005, which set a one-month extendable period for reply. In the absence of a timely filed response, the application became abandoned on May 22, 2005. A Notice of Abandonment was mailed on January 4, 2006.

Again, applicant requested that the Office withdraw the holding of abandonment due to non-receipt of the Notice to Comply of April 21, 2005, remail the Notice and restart the period to reply.

A review of the record indicates no irregularity in the mailing of the Notice to Comply, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice to Comply was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ For example, if a three-month period for reply was set in the non-received Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office action must be submitted as documentary proof of non-receipt of the Office action.

¹ MPEP § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The Notice to Comply set a one-month extendable period for reply. The practitioner asserted that a search of the file jacket and docket records indicated that the Notice was not received. The practitioner submitted a copy of the docket records showing all replies docketed for one month from the mail date of the Notice to Comply (from April 21, 2005, up to and including, May 22, 2005) as documentary proof of non-receipt of the Notice.

As applicant made the required showing, the petition to withdraw the holding of abandonment is **granted**. In view of the evidence presented in support of the contention that the practitioner did not receive the original Notice, **Technology Center Art Unit 1642 shall re-mail the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures of April 21, 2005, and restart the period for response.**

The \$130.00 petition fee is unnecessary and will be refunded to the Deposit Account.

This matter is being referred to Technology Center Art Unit 1642 for further action in accordance with this decision.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.



Christina Tartera Donnell
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Office of Petitions